IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Bail Appl..No. 7452 of 2007()

CR.NO.46/07 OF ARYANAD EXCISE RANGE

: PETITIONER/ACCUSED

K.P.SHAJI, AGED 24 YEARS,
S/O. KRISHNANKUTTY, CHIRAKANATHU VEEDU,
ERUMODE, ARYANADU.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7452 of 2007

Dated this the 5th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. He faces allegations under the Kerala Abkari Act. He along with 2 other accused (A1 & A2) was allegedly engaged in the activity of illicit distillation of arrack. 25 litres of arrack as also the utensils for distillation were allegedly seized on 28.06.07. A co-accused (A1) was arrested. The petitioner and the 2nd accused allegedly took to their heels. The petitioner has not been arrested yet. Investigation is in progress. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is innocent. Totally false allegations are raised against the petitioner. He may be granted anticipatory bail.

2. The learned Public Prosecutor opposes the application. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-